

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Southern Railway Company

Dispute: Claim of Employees:

1. That under the current Agreement, the Southern Railway Company, hereinafter referred to as the Carrier, was wrong, arbitrary, discriminatory, capricious, and not in keeping with the provisions of the current working Agreement Rule #34, when they discharged Machinist M. E. Joffer, hereinafter referred to as Claimant.
2. That accordingly, Carrier reinstate Claimant for all lost time wages with all rights under the working agreement, and all other agreements unimpaired, account Carrier deprived the Claimant of his contractual rights and benefits when they discharged him.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The record shows that claimant was employed by the Carrier as a machinist on the Atlanta Shop Seniority District, with seniority date of October 31, 1966.

On March 27, 1966 claimant had made written application for any position with the Carrier. On that application, copy of which has been made a part of the record, the claimant left blank all questions relating to prior military service. He signed the application form with the statement that "the foregoing statements are true to the best of my knowledge and I agree that they may be investigated and that any misrepresentation shall be just cause for my dismissal".

On April 21, 1966, claimant was given the Carrier's usual entry to service physical examination. Before he was examined claimant was requested to answer the questions asked by Surgeon's Report of Physical Examination. That form, copy of which has also been made a part of the record, shows that when asked to state all injuries he had had, he answered "None". Claimant further stated that he had no deformity, physical disability or ailment of any kind; he denied ever having any

trouble with his back due to an injury; he denied ever having been a patient in a hospital; he denied that he had ever been rejected for or received a medical discharge from military service; denied that he ever had any disorder of his back or spine; and denied that he had ever had an operation or other procedure for condition of his neck or back.

Claimant was hired as a machinist trainee. After completing the training program, he made application for employment as a machinist. On that form he answered "none" in the space asking for the branch of prior military service.

On September 21, 1976, claimant allegedly received an injury to his back while placing scrap bearings in a wooden bin. He filed a personal injury suit against the Carrier under the Federal Employers Liability Act, seeking \$258,000.00 damage plus costs. He returned to work about November 1, 1977. On August 31, 1978, claimant allegedly again injured his back while attempting to refit a motor on an overhead crane. The initial FEIA suit was amended to ask for an additional \$325,000.00, plus cost.

In preparing Carrier's defense to the suit, Carrier's Division Counsel in Atlanta, requested that a deposition be obtained from claimant. The deposition was taken on September 24, 1977. The Carrier was represented by its Trial Counsel. Claimant's attorney was also present, as was Carrier's Claim Agent. In the deposition, claimant stated that he had suffered a back strain while in military service; that he had enlisted in the air force; was in military service a short time, and received a medical discharge due to back strain.

The Carrier contends that while the information contained in the deposition was used in defending against the claimant's FEIA suit, it was not made known to any Mechanical Department representative until August 15, 1978, when Carrier's General Foreman, J. L. Robbins, was verbally informed of it. The General Foreman was furnished a copy of the deposition three days later; he examined it and compared it to claimant's pre-employment application and medical forms. The General Foreman, on September 9, 1978, notified claimant to report on September 15, 1978, "for a preliminary investigation into your employment with Southern Railway Company and information I have just been made aware of concerning your previous military experience and subsequent medical discharge. You may have present for the investigation, your duly accredited representative (local chairman or committeeman should you so desire.)"

Upon request of the Local Chairman, the preliminary investigation was postponed to October 20, 1978, at which time it was conducted, and on the same date the claimant was notified:

"I refer to the preliminary investigation I held with you this date, October 20, 1978, at which time you were charged with falsification of your pre-employment and medical application forms by failure to disclose your prior back injury, hospitalization for back injury and subsequent medical discharge from military service.

"Based on the facts developed during this investigation it is my opinion that you are guilty as charged, and this letter is to confirm the statement made to you at the preliminary investigation, that for this offense you are dismissed from service of the Southern Railway.

I acknowledge your verbal request for a formal investigation at the time of the preliminary; however, it is my decision not to hold the discipline in abeyance because I consider this to be a major offense, as outlined in Rule 34, paragraph C of the current work agreement."

Written request was made by the Local Chairman on October 23, 1978, for formal investigation in accordance with Rule 34(c) of the applicable Agreement. Formal investigation was set for 1:30 P.M., October 26, 1978. The Local Chairman, on October 24, 1978, took exception to the date as being outside the time limits of the Agreement, but requested further extension. After several postponements the formal investigation was held on November 21, 1978, with the Superintendent of Atlanta Motor Shop acting as conducting officer. Claimant was present at the investigation and was represented.

A copy of the investigation conducted on November 21, 1978, has been made a part of the record. We have carefully reviewed the transcript and do not find that any of claimant's substantive procedural rights was violated.

From our review of the transcript, including claimant's statement, we are convinced that claimant did falsify his application for employment that he filled out on March 27, 1966, and the Surgeon's Report of Physical Examination.

Many awards of this Board have held that employees who falsify applications for employment are subject to discharge, regardless of the time lapse between the date of application and the date of discovery. See Second Division Award 6391 and others cited therein.

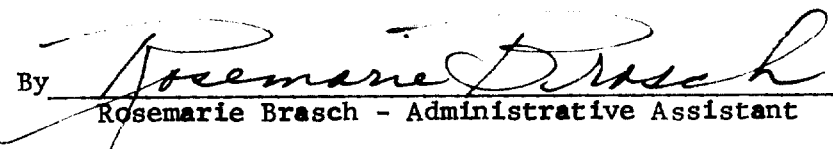
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of September, 1981.